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Via E-mail (WesternComments@ecy.wa.gov)
Department of Ecology
Water Quality Program
Municipal Stormwater Permits
P.O. Box 47696
Olympia, WA 98504-7696
Attention: Kathleen Emmett

Re: Puget Soundkeeper Alliance's Comments on Draft Phase II Municipal Stormwater General Permit

Dear Kathleen:

These comments on the draft Phase II Municipal Stormwater General Permit are submitted on behalf of the Puget Soundkeeper Alliance (PSA). Thank you in advance for your consideration.

General Comments

Comment 1: In light of the claims challenging the Environmental Protection Agency's failure to consult with federal wildlife agencies, and the probability that EPA will do these consultations, PSA suggests this, and other NPDES permits issued before consultation is completed, contain an explicit "reopener clause" requiring Ecology to make any changes to the permit at EPA's request through permit modification.

Comment 2: As Ecology points out in the draft fact sheet, stormwater is the leading contributor to water quality pollution in urban waterways and the fastest growing water quality problem. The Governor's Puget Sound Conservation and Recovery Plan (2005-07) prioritizes reducing harm from stormwater runoff. The lengthy timelines in this permit fail to reflect this urgency, particularly given that this permit will be issued at least three years late and that the permittees have had ample notice of forthcoming permit requirements. In specific comments below, PSA has identified several timelines that should be shortened in order to reduce the discharge of pollutants to the maximum extent practicable, as required by 40 C.F.R. § 122.34.

Comment 3: In general, PSA is pleased that Ecology would incorporate and thereby prescribe key portions of its stormwater management manual into these permits by reproducing them in Appendix 1. However, PSA shares the concerns that many have expressed about some of the 2005 modifications made to the Western Washington Manual. In particular, PSA shares the concerns expressed by the U.S. Fish and Wildlife Service and NOAA Fisheries in their joint December 23, 2004, comments on the 2005 manual revisions and their September 2005 comments on the preliminary drafts of the municipal stormwater permits. Like the Services, PSA questions whether the changes to applicability criteria for the flow control standards (both for highly urbanized drainage basins and to exempt river reaches from flow control), the average annual daily traffic thresholds for advanced treatment, and the limitations on implementation of construction stormwater pollution prevention requirements are adequate in consideration of the needs of threatened and endangered salmonids. Given the changes made in the 2005 amendment, PSA does not believe the Western Washington Manual continues to represent AKART, or MEP.

Comment 4: Under § 308(a) of the CWA, 33 U.S.C. § 1318(a), Ecology must include monitoring requirements in permits "[w]henever required to carry out the objective of this chapter," including but not limited to developing effluent limitations or performance standards and determining whether any permittee is in violation. These objectives are ambitious: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" by eliminating the discharge of pollutants to navigable waters, prohibiting the discharge of toxic pollutants in toxic amounts, and to attain water quality that provides for recreation and the protection of fish, shellfish, and wildlife by 1983. 33 U.S.C. § 1251(a). To comply with § 308(a), this permit must establish monitoring requirements that (a) are sufficient to determine whether stormwater discharges are causing or contributing to violations of water quality standards, and (b) provide useful information for developing effluent limitations or performance standards in the next permit. The permit fails to do so, and thus fails to comply with § 308(a).

Comment 5: The draft fact sheet indicated that the primary objective of the monitoring program is to provide a feedback loop for adaptive management. Yet, the permit is entirely devoid of any adaptive management process or program. This permit should require monitoring sufficient to provide information with which permittees may make real-time changes to their programs, and should require these changes be made in a meaningful timeframe as part of a prescriptive adaptive management program.

<u>Condition S1: Permit Coverage Area and Permittees</u>

Comment 6: Given the rapid growth this region is experiencing, PSA believes it makes sense to include all municipalities in the Puget Sound Basin in the Phase II permit. By covering more of these entities in this permit instead of waiting until unrestrained growth forces them into coverage, Ecology will promote prudent stormwater planning now and eliminate the need for many costly retrofits. Ecology should consider the approach taken in the San Diego County Municipal Stormwater Permit, which covers all

municipalities in the area under the same permit.[1] At a minimum, PSA supports including all those municipalities identified on page 24 of the Fact Sheet.

Comment 7: Condition S1.B.3., Ecology may require other operators of small MS4s to obtain coverage if it determines the small MS4 is "a significant source of pollution to surface waters of the state." The Fact Sheet explains the criteria Ecology used to designate several additional permittees, and that any party may petition Ecology to include other additional entities. PSA suggests Ecology add to its evaluation criteria the presence of listed species, critical habitat, areas currently unoccupied that are important for the recovery of listed species. Also, the permit or fact sheet should explain the process for to petition Ecology to include additional entities.

Comment 8: Under S1.B. 1.a., the "and" at the end of line 25 seems unnecessary.

Comment 9: Under S1.C.1., there is an unconnected "or" on line 18 that should be removed.

Comment 10: PSA strongly opposes the exemption provided in Condition S1.C.2. As noted in Comment 2, it makes better sense to include all of these communities, which are likely to be regulated at some point in the future, so that as growth occurs, it is with appropriate stormwater planning.

Comment 11: S1.C.2.a. provides that owners and operators of an otherwise regulated MS4 are not required to obtain coverage if the portions of the small MS4 located within urban areas serve a population of 1000 or fewer and, among other conditions, the small MS4 is not "contributing substantially to the pollutant loadings of a physically interconnected MS4 ..." The permit is unclear as to how the determination whether the small MS4 is "contributing substantially" or not will be made.

Question 11.1: What does "contributing substantially" mean here? Who makes this determination? How is the determination to be made?

Comment 12: S1.C.2.b. provides that owners and operators of an otherwise regulated MS4 are not required to obtain coverage if the portions of the small MS4 located within urban areas serve a population of 1000 or fewer and, among other conditions, the discharge of pollutants from the small MS4 "have not been identified as a cause of impairment of any water body to which the MS4 discharges ..." The permit is unclear as to the meaning of "impairment" and as to how small MS4s might be "identified as a cause" of impairment.

Question 12.1: In this context, what does "impairment" mean?

Question 12.2: How are MS4s that cause impairment to be identified?

[1] See: http://www.swrcb.ca.gov/rwqcb9/programs/sd_stormwater.html.

Comment 13: Under S1.D.2.d.i., the "or" on line 13 should be removed.

Condition S4: Compliance with Standards

Comment 14: PSA is pleased that Condition S4.A. includes a prohibition on discharges that would violate water quality standards. Unfortunately, the remainder of the permit does too little to ensure compliance with this condition. The draft fact sheet explicitly provides that Ecology's strategy is merely to "Evolve towards eventual compliance with water quality standards through successive permit cycles." FS, p.28, ll. 26-27. And Condition S4.E. similarly sets the goal of "mak[ing] progress towards compliance" with water quality standards. It thus appears that despite the statement in Condition S4.A., this permit will not effectively prohibit discharges that will violate water quality standards.

The draft fact sheet explains that Ecology has discretion to determine whether to require strict compliance with § 301(b)(1)(C) of the CWA, 33 U.S.C. § 1311(b)(1)(C) (requiring more stringent effluent limitations necessary to meet water quality standards). Since stormwater is the leading contributor to water quality pollution in urban waterways, it makes sense to require strict compliance with § 301(b)(1)(C) in this permit.

Ecology explains that "it may take decades or longer to address the water quality impacts of existing municipal stormwater discharges." FS, p. 31, ll. 15-16. Puget Sound does not have decades. Ecology should take decisive action now to effectively mandate compliance with water quality standards.

Question 14.1: How does the permit meaningfully ensure compliance with water quality standards, as required by RCW 90.48.520?

Condition S5: Stormwater Management Program for Cities, Towns, and Counties

Comment 15: In its review of EPA's Phase II regulations, the Ninth Circuit Court of Appeals held that municipal stormwater dischargers' stormwater management programs must be reviewed by permitting agencies. *Environmental Defense Center v. EPA*, 344 F.3d. 832, 856 (9th Cir. 2003) ("... stormwater management programs that are designed by regulated parties must, in every instance, be subject to meaningful review by an appropriate regulating entity to ensure that each such program reduces the discharges of pollutants to the maximum extent practicable."). The draft permit provides for no such review. The draft fact sheet explains that Ecology has chosen instead to spell out minimum elements of a stormwater program that should, if followed, meet the MEP standard. Given the lack of Ecology review and approval, the permit should at least explicitly state that any failure to achieve the minimum elements constitutes a permit violation.

As the fact sheet acknowledges, the one-size-fits-all approach of this permit "provides less flexibility to tailor local stormwater programs to reflect local priorities and needs." FS, p. 21, ll.25-27. PSA therefore suggests the permit require permittees (both

Phase I and Phase II) sharing a basin or watershed to cooperatively develop SWMPs that are tailored to local conditions and priorities.

Question 15.1: Given that Ecology will not review and approve permittees' SWMPs, how will this permit ensure that these stormwater programs actually meet the MEP standard?

Comment 16: PSA believes intergovernmental, watershed/basin-wide planning is necessary for effective stormwater management. The Phase I permit acknowledges this by including a requirement for permittees to include "coordination mechanisms among entities covered under a municipal stormwater NPDES permit to encourage coordinated stormwater-related policies, programs and projects within a watershed." Phase I Draft, Condition S5.C.3.a. Requiring Phase I permittees to coordinate with Phase II permittees without imposing a corresponding requirement on Phase II permittees is counterproductive, and is likely to generate conflicts between Phase I and Phase II permittees. This permit should include provisions requiring coordination with all entities covered by municipal stormwater permits.

Comment 17: S5.A. states that SWMPs shall be designed to reduce the discharge of pollutants to the maximum extent practicable and "protect water quality." Other permit terms including this phrase include: S5.B., S5.C.4.a.ii., S6., and S6.C.6.a.vi.. In all cases, the quoted phrase is vague, and should be replaced with "ensure compliance with water quality standards."

Question 17.1: What does "protect water quality" mean? Does it mean "ensure compliance with water quality standards"? If not, why not?

Comment 18: S5.A.1. allows permittees 4 ½ years to develop and implement the SWMPs. This timeline is far too long, and does not satisfy MEP. Permittees should develop and implement SWMPs within 2 years.

Comment 19: PSA believes the education and outreach component of SWMPs should, in addition to the objectives listed in S5.C.1.a., increase awareness among homeowners and homeowners' associations of the importance of regularly inspecting and properly maintaining stormwater facilities within their development.

Comment 20: Under S5.C.1.a.vii., the brackets on lines 8-9 should be removed.

Comment 21: The timelines under S5.C.3. seem far too long. In particular, it does not seem reasonable to give permittees 4 ½ years to develop and implement a program to detect and address non-stormwater discharges, spills, illicit connections and illegal dumping under S5.C.3.c.; 3 years to prioritize receiving waters for visual inspection, 4 years to complete field assessments of just three high priority water bodies under S5.C.3.c.ii.; 4 ½ years to distribute appropriate information about the hazards associated with illegal discharges and 2 years to list and publicize a hotline for public reporting of spills and other illicit discharges under S5.C.3.d.i. & ii; 2.5 years to train

field staff whose job it is to identify, investigate, and terminate illicit discharges and connections under S5.C.3.f.i.; or 3 years to train other staff under S5.C.3.f.ii. These timelines do not satisfy the MEP standard and should be significantly shortened.

Question 21.1: What is the justification for providing such lengthy timelines for the IDDE program?

Question 21.2: How do these timelines satisfy the MEP standard?

Comment 22: Condition S5.C.3.b.i. & iv. provide that the regulatory mechanism to effectively prohibit illegal discharges and/or dumping "does not need to prohibit" certain categories of non-stormwater discharges "unless the discharges are identified as significant sources of pollutants to waters of the State." The permit does not indicate how or by whom this determination should be made. Also, among these categories are "rising ground waters." Rising ground waters may be contaminated with serious non-stormwater pollutants, including septic system pollutants and contaminants from other sources. Septic system contamination is a very significant issue for Vancouver, for example. This category should be changed to "uncontaminated rising ground waters."

Question 22.1: Who will determine that non-stormwater discharges in the categories listed under S5.C.3.b.i. are significant sources of pollutants to waters of the State? How is this determination to be made?

Comment 23: S5.C.3.b.ii. requires the permittees to prohibit certain categories of non-stormwater discharges, except under certain conditions. Ecology should add residential car wash water to this list, and establish appropriate conditions, such as washing cars on lawns or other permeable surfaces.

Comment 24: Illicit discharges, spills and illegal dumping present potentially serious problems for water quality. The permit does not appear to require permittees to respond to these problems as quickly as practicable. S5.C.3.c.iii. provides that compliance will be achieved by investigating complaints, reports, or monitoring information indicating a potential illicit discharge, spill, or illegal dumping "within 7 days, on average." The permit should require the permittees to complete an investigation no later than 7 days after receiving the complaint or report. Also, S5.C.3.v. allows permittees three weeks (21 days) to initiate an investigation of an illicit connection, and then six months (180 days) to ensure termination of the connection. This response time is inadequate. The permit should state that permittees must initiate an investigation "as soon as possible and not later than 7 days" after it discovers or receives a report of an illicit connection, and should require permittees to use enforcement authority to ensure removal of any confirmed illicit connection within 30 days.

Comment 25: PSA strenuously objects to the Phase II permit's 1-acre development threshold for requiring stormwater control. This threshold will reduce the area of development subject to stormwater treatment and flow control. The threshold is inconsistent with the *2005 Stormwater Management Manual for Western Washington*,

does not meet MEP or AKART standards, and will drastically reduce the effectiveness of stormwater management throughout Western Washington. The federal wildlife agencies have stated that the 1-acre development threshold will result in greater effects to listed species and their habitat. In addition, failing to regulate these areas now will result in less effective stormwater controls/retrofitting in the future. PSA sees no rational reason not to apply the *2005 Stormwater Manual* thresholds to Phase II permittees, as these areas are already developed. The permit should include the same thresholds for requiring stormwater controls and treatment as the Phase I permit and *2005 Stormwater Manual*.

Question 25.1: Given that it is practicable for Phase I permittees to use the 2005 Stormwater Manual development thresholds, how does the larger 1-acre development threshold for Phase II permittees satisfy the MEP standard?

Question 25.2: Given that the *2005 Stormwater Manual*, which establishes a much smaller development threshold for stormwater treatment and flow control, represents Ecology's best guidance on proper stormwater management, how can the 1-acre development threshold possibly satisfy AKART?

Comment 26: Condition S5.C.4.a.i. purports to allow permittees to include in ordinances or other enforceable documents the minimum requirements, thresholds, and definitions in Appendix 1, or "an equivalent approved by Ecology." These provisions do not specify any procedure (including public participation) for Ecology to determine whether alternative minimum requirements, thresholds, and definitions are "equivalent to Appendix 1." NPDES permits should not incorporate minimum performance measures that do not yet exist. This provision would allow Ecology to effectively modify permit conditions without the appropriate process by determining that certain measures are "equivalent" to those in Appendix 1, and thereby authorizing them for use under this permit. Similar language appears in S5.C.4.a.ii. Ecology should either identify approved equivalent measures or if they do not exist, remove references to them.

Question 26.1: How will Ecology determine whether alternative minimum requirements, thresholds, and definitions are equivalent to those in Appendix 1?

Question 26.2: If Ecology makes such a determination, will it then issue a permit modification? If not, why not?

Comment 27: S5.C.4.a.i. also states that "more stringent requirements may be used, and/or certain requirements may be tailored to local circumstances through the use of basin plans or other similar water quality and quantity planning efforts. Such local requirements and thresholds must provide equal protection of receiving waters and equal levels of pollutant control as compared to Appendix 1." PSA supports providing for application or more stringent requirements based on local circumstances, but this language should be strengthened to *require* more stringent requirements as necessary to ensure compliance with water quality standards. Also, the list of suggested venues for establishing more stringent or tailored requirements should include recovery planning forums and efforts such as the Shared Strategy for Puget Sound and the Lower Columbia

River Fish Recovery Board, in addition to "basin plans or other similar water quality and quantity planning efforts." Finally, it seems counterproductive and illogical to require these more stringent or better-tailored requirements to provide only "equal protection of receiving waters and equal levels of pollutant control as compared to Appendix 1." More stringent or better tailored requirements should provide *superior* protection and *superior* levels of pollution control.

Comment 28: PSA is pleased to see that barriers to Low Impact Development technologies must be removed under S5.C.4.b.iv., but the permit does not go far enough. As the draft fact sheet acknowledges, LID is one of the most effective ways to minimize impacts of stormwater discharges from areas of new development and redevelopment. The permit should require LID and establish appropriate LID standards to be incorporated into permittees' programs.

Comment 29: S5.C.4.b. gives permittees two years to implement a permitting process. This timeline seems unreasonably long and may unnecessarily delay implementation of the permit's substantive requirements. The timeline should be shortened to one year.

Comment 30: PSA supports the requirement in S5.C.4.c.i. to adopt an ordinance that clearly identifies the party responsible for maintenance and inspection of post-construction stormwater facilities. Many housing developments contain stormwater facilities that homeowners' associations are expected to inspect and maintain. The failure of these associations to provide proper inspection and maintenance poses a significant impediment to effective stormwater control, and may be addressed in part by the ordinance required by this permit condition.

Comment 31: S5.C.4.c.ii. provides that maintenance standards are violated only if inspection identifies "required maintenance action related to facility function" and the maintenance action is not completed within a certain period of time: 6 months for typical maintenance, 9 months for revegetation, and 2 years for capital construction of less than $25,000. The timelines here are too long, especially for typical maintenance. The same is true of S5.C.5.a.

Question 31.1: Does Ecology anticipate that some maintenance actions will require capital construction of more than $25,000? If so, what is the timeline for completing maintenance actions of that type?

Comment 32: S5.C.4.c.v. provides that compliance with the inspection requirements of S5.C.4.c.iii. & iv. "shall be determined by the presence of an established inspection program designed to inspect all sites and achieving inspection of at least 95% of the sites." In general, PSA objects to terms providing for presumptive compliance. However, if Ecology insists on such a term in this case, the permit should require evidence of actual inspection of 95% of sites in order to meet the presumption. The same comment applies to S5.C.5.e.

Question 32.1: As a practical matter, how will Ecology and the public know whether permittees are achieving the 95% inspection threshold for presumed compliance?

Comment 33: S5.C.5. allows permittees 3 years to develop an operations and maintenance program with "the ultimate goal of preventing or reducing pollutant runoff from municipal operations." The 3 year timeline is too long and should be reduced to 1 year. The "ultimate goal" of the program should be to prevent or reduce pollutant runoff to the MEP, and to ensure compliance with water quality standards.

Question 33.1: Does the permit address the inspection and maintenance needs of existing private stormwater facilities? If not, why not?

Comment 34: Unlike the Phase I permit, S5.C.5. does not include any requirement to inspect or require maintenance of stormwater facilities that are not owned or operated by the permittee, such as those in housing developments that are supposed to be maintained by homeowners or homeowners' associations. PSA believes this is a significant omission. The permit should better provide for the inspection and maintenance of existing private stormwater facilities.

Comment 35: S5.C.5.a. directs permittees to adopt maintenance standards that are "as protective, or more protective" of facility function as those in Volume V of the *2005 Stormwater Manual.* The permit should clarify how and who will determine whether maintenance standards are "as protective or more protective."

Question 35.1: Will Ecology review the maintenance standards developed under this section to ensure they are "as protective or more protective" than the standards in the *2005 Stormwater Manual*? If not, who will make this determination?

Comment 36: S5.C.5.b. provides that, "in the absence of maintenance records of permanent stormwater treatment and flow control facilities, the Permittee may substitute written statements ... based on inspection and maintenance experience" to change the inspection frequency to less than annually. This provision suggests that maintenance records need not be retained, as seems to be required by S9.C. Also, the provision does not include enough guidance as to what information should be included in a written statement. At a minimum, these statements should summarize the "inspection and maintenance experience" upon which the request is based.

Question 36.1: Do inspection and maintenance records need to be retained? If not, why not?

Question 36.2: If maintenance records must be retained, under what circumstances would the "written statement" alternative be appropriate?

Question 36.3: What information must be included in the written statement proposing less frequent inspections?

Comment 37: For consistency, S5.C.5.h. should begin "Develop*ment* and implement*ation* of ..." Also, there appears to be no timeline for providing the staff training required by this section. If the training need only be provided by the 3 year deadline indicated in S5.C.5. for developing and implementing the O&M program, PSA believes this is too long. Training should be expedited, as it is a necessary component of an effective program.

Question 37.1: Is there a timeline for providing the staff training required by S5.C.5.h.? If so, what is it? If not, why not?

Comment 38: S5.C.5.i. requires permittees to develop and implement SWPPPs for their heavy equipment maintenance or storage yards and material storage facilities. There does not appear to be a deadline for implementing these SWPPPs. Under the Industrial Stormwater General Permit, similar sites must develop and implement SWPPPs within 30 days of receiving coverage (for existing sites). S5.C.5.i. should contain the same 30 day deadline, particularly since the permit encourages generic SWPPPs that can be applied at multiple sites. This section also provides that implementation of non-structural BMPs must begin immediately after the SWPPP is developed and that the SWPPP must include an implementation schedule for structural BMPs. The permit itself should also provide reasonable deadlines for these BMPs to be fully implemented.

Question 38.1: Is there a deadline for developing and implementing SWPPPs? If so, what is it? If not, why not?

Condition S6: Stormwater Management Program for Secondary Permittees

Comment 39: S6. allows secondary permittees 4 ½ years to develop and implement the SWMP. This timeline is far too long, and does not satisfy MEP. Secondary permittees should develop and implement SWMPs within two years.

Comment 40: S6.A. requires secondary permittees to include coordination mechanisms in their SWMPs "to encourage coordinated stormwater-related policies, programs, and projects within a watershed." PSA strongly supports requiring such coordination, which is crucial for effective planning, priority setting, program evaluation, and monitoring. This provision should be strengthened, however, by replacing "to encourage" with "to ensure." Also, as stated in Comment 12, the primary permittees must be required to include such mechanisms in their SWMPs as well.

Comment 41: The timelines in Condition S6.C. are far too long and should be reduced. It is not reasonable to give secondary permittees three years to label only half of their storm drain inlets. Secondary permittees should be required to label all storm drain inlets within one year. Similarly, it is not reasonable to give secondary permittees three years to distribute educational information, particularly when the form of this information is entirely up to the secondary permittees and when they may comply with this requirement simply by participating in their local jurisdiction's efforts.

Comment 42: Just as the secondary permittees should not be allowed 4 ½ years to develop their SWMPs, they should not be allowed 4 ½ years to solicit public review of the SWMP.

Comment 43: PSA's comments on S6.C.3.b.ii. & v. are the same as for S5.C.3.b.i. & iv. See Comment 22 and Question 22.1.

Comment 44: PSA's comments on S6.C.3.b.iii. is the same as for S5.C.3.b.ii. See Comment 23.

Comment 45: Developing and maintaining comprehensive maps of connections and outfalls, including the tributary conveyances, associated drainage areas, and land use for outfalls, is crucial to effective stormwater management. Only with such maps is it possible to track and resolve many problems. When a serious spill occurs, for example, having adequate maps is the only way to know where the pollutants will be delivered, and thus the only way to adequately respond to the spill. Additionally, when a problem is detected at an outfall, comprehensive mapping helps determine the source. Finally, having these maps facilitates the work necessary to prevent, investigate, and terminate illicit discharges and illegal connections. Developing adequate maps of connections and outfalls including the tributary conveyances, associated drainage areas, and land use for outfalls should be a priority for this permit.

Comment 46: S6.C.3.c. gives secondary permittees 4 ½ years to develop a storm sewer map showing the locations of all known storm drain outfalls. This timeline is unreasonably long and should be reduced to one year.

Comment 47: S6.C.3.e. gives secondary permittees 4 ½ years to develop and implement a spill response plan. This timeline is outrageous, and with MEP and AKART. A spill response plan is the simplest way to prevent stormwater pollution, and every responsible entity should already have developed such a plan. The permit should give secondary permittees 30 days to develop and implement the plan.

Question 47.1: What is the justification for allowing 4 ½ years to come up with a spill response plan?

Question 47.2: How does not requiring secondary permittees to have a spill response plan for 4 ½ years meet the MEP and AKART standards?

Comment 48: S6.C.3.f. should establish a reasonable timeline for staff training. See Comment 37 and Question 37.1.

Comment 49: S6.C.6.a. gives secondary permittees 3 years to develop and implement an operation and maintenance plan "to minimize stormwater pollution." This does not seem like a reasonable timeline for this task, which should be completed in no

longer than 2 years. Also, the objective should be stated in terms of reducing discharge of pollutants to the maximum extent practicable.

Comment 50: S6.C.6.c. should establish a reasonable timeline for staff training. See Comment 37 and Question 37.1.

S8: Monitoring

Comment 51: PSA strenuously objects to the permit's failure to require water sampling or other testing. An effective monitoring program, which includes sampling of discharge, receiving water, sediments, and biological assessment is critical because it is the only way to gather information necessary to understand the severity of the stormwater problem and the effectiveness of management programs. It is unreasonable to exempt Phase II permittees from the monitoring required under the Phase I permit, because the same rationale supporting the Phase I monitoring requirements applies to Phase II as well. If it is feasible and practicable for Phase I permittees to conduct this monitoring, then it should be for Phase II permittees too. Ecology should consider the approach taken in the San Diego County Municipal Stormwater Permit,[2] which requires a comprehensive, collaborative monitoring program with an adaptive management process for all municipalities. PSA has provided more information on this approach in its comments on the Phase I monitoring program, and incorporates these comments by reference.

Question 51.1: How does exempting Phase II permittees from monitoring meet the MEP standard?

Question 51.2: How does exempting Phase II permittees from monitoring satisfy AKART?

Question 51.3: How does Ecology expect to make improvements in the next permit cycle without monitoring data?

Question 51.4: S8.B.2. requires permittees to submit an "assessment of the appropriateness of BMPs identified by the Permittee for each component of the SWMP." What will this assessment be based upon, if not monitoring data?

Comment 52: S8.C.2.a. gives permittees 4 ½ years to identify either one or two outfalls where stormwater sampling could be conducted. As the draft fact sheet explains, cities typically have hundreds or thousands of outfalls. Given the extreme advance notice of monitoring requirements, Phase II permittees should be prepared to monitor a more representative sample of outfalls. S8.C.2.b.ii. gives permittees 4 ½ years to identify two suitable questions and select sites where SWMP effectiveness monitoring will be

[2] See: http://www.swrcb.ca.gov/rwqcb9/programs/stormwater/sd%20permit/Reissuance/Final%20Tentative%20M&R%20Program.pdf

conducted. The timelines in both provisions are unreasonably long and inconsistent with MEP and AKART.

Comment 53: S8.C.2.c. should establish a timeline for permittees to "prepare to monitor" treatment BMP sites. Also, watershed/basin-level coordination should be required in selecting treatment BMPs for the monitoring required in S8.C.2.c, and Ecology should facilitate BMP selection to ensure that a broad range of BMPs will be monitored. Otherwise it is possible that all permittees will select the same BMPs.

Question 53.1: How does the permit ensure that a broad enough range of BMPs are selected for monitoring to provide useful information?

S9: Reporting Requirements

Comment 54: As indicated in the errata sheet, the first annual report should be submitted in 2007, not 2008.

Comment 55: There are two S9.C.'s. The paragraph beginning on line 24 of page 37 should be S9.D. and the one beginning on line 27 should be S9.E.

General Conditions

Comment 56: Condition G4. should include reporting requirements for anticipated bypass (10 days advance notice) and unanticipated bypass (24 hour report), as required by 40 C.F.R. § 122.41(m)(3)(i), (ii).

Comment 57: Condition G12.D. provides that the director may terminate coverage under the General Permit when "a determination that the permitted activity endangers human health or the environment, or contributes significantly to water quality standards violations" has been made. It is unclear how such a determination would be made, and the phrase "contributes significantly" is vague.

Question 57.1: How will a determination under this provision be made, and by whom?

Question 57.2: What does "contributes significantly" mean here?

Comment 58: Condition G14.D. provides that the permit may be revoked when "information is obtained which indicates that cumulative effects on the environment from dischargers covered under this general permit are unacceptable." Ecology should explain what is meant by "cumulative effects" as well as the criteria by which to determine whether such effects are "unacceptable."

Question 58.1: In this context, what does "cumulative effects" mean?

Question 58.2: How will it be determined whether cumulative effects are "unacceptable"? Who will make that determination? What kind of information will trigger such a determination?

Yours truly,
SMITH & LOWNEY, P.L.L.C.

By: s/Jennifer P. Joseph
Jennifer P. Joseph